IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

CENTRAL DIVISION

PETTER INVESTMENTS, a Michigan corporation doing business as Riveer,

Plaintiff,

vs.

HYDRO ENGINEERING, a Utah corporation, et al.,

Defendants.

CASE NO. 2:14-CV-45DB

BEFORE THE HONORABLE DEE BENSON

February 12, 2015

Tutorial Hearing

A P P E A R A N C E S

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February 12, 2015 2:00 p.m.

P R O C E E D I N G S

THE COURT: Good afternoon.

We're here in Petter Investments, Inc. against Hydro Engineering, Inc. The case number is 14-CV-45. Brett Foster is here with Mark Miller and they represent the defendant, Hydro Engineering.

Is it Mr. Lobbin?

MR. LOBBIN: Yes, Your Honor.

THE COURT: Mr. Stephen Lobbin.

Is this Mr. Ford?

MR. FORD: Yes, Your Honor.

THE COURT: Mr. Mark Ford is here also representing the plaintiff, Petter Investments.

Let me hear who else is here and wants to make an appearance.

MR. LOBBIN: Sure, Your Honor. For the plaintiff, Riveer, we have Matt Petter, who is the president of the company, and who was here last time in November, as well as Jessica Garcia from Mr. Ford's firm to help us with some of the technology if necessary.

THE COURT: Okay.

MR. LOBBIN: And then Dr. David Paulus, who is an expert and who has submitted declarations on the claim

construction issues, is also here. Depending on how formal or informal Your Honor wishes to proceed, they can also answer questions similar to the last time when you asked Mr. Petter a question on some issues.

THE COURT: All right. Thank you, Mr. Lobbin.

Mr. Miller, who do you have with you?

MR. MILLER: We have Jim and Alan McCormick from Hydro Engineering.

THE COURT: Nice to have you here.

We're here for a tutorial offered by the plaintiff and I am happy to be educated.

Tell me how you plan to proceed, Mr. Lobbin.

MR. LOBBIN: Thank you, Your Honor.

We are interested in educating the Court on this industry and some of the background of the technology, showing the Court what some of the products and systems are that these companies make and sell and have innovated, and introduce some of the terms that come into play when discussing these patents. I'm not sure how much of that Your Honor wants, so we have prepared a presentation that shows you some of the implementations of the various products and systems that Riveer does, and we have also prepared an animation to show sort of the history of the products at issue in the case.

I will be pausing these videos to maybe elaborate

on some of the things that you are seeing and, of course, at any point you can say, depending on your familiarity with the case already, that you may have seen enough or don't need more of it.

THE COURT: Okay. Ron, why isn't this screen up here working, on the clerk's desk? I'm just looking at the one that is not working.

Can you lower that intermediate shade? It is kind of glaring.

MR. LOBBIN: The idea would be that at the end of the tutorial, Your Honor would have a good sense for kind of what these companies are all about and what they do besides the particular items that you see when you review these patents. In doing so, it will help elaborate on the specifics that are in the patents.

(WHEREUPON, the tutorial was begun.)

UNIDENTIFIED SPEAKER: How can we stop the estimated 500 million tons of metals, solvents, sludge and other waste that flow into municipal storm water systems or groundwater every year by activities as simple as washing a car? By ensuing that the wash water is recovered, filtered and treated before it can cause harm in a wash water recovery system from the world's leader in environmental solutions, Riveer.

UNIDENTIFIED SPEAKER: Typically we're filtering

waste water from washing operations where we'll have a lot of heavy solids, oils and greases and sometimes microbial. The customers come to us with a washing problem. They have an object or objects that they want to either wash or treat in some manner with water, so if we have a construction equipment company, we are washing mud and grease off. If we have a company that is making parts, they might be just washing welding slag off and machine oil, and we have developed several systems for washing airplanes and aircraft of different types, everything from B-52 bombers to Apache and Black Hawk and helicopters, municipal salt truck washing and municipal yards washing municipal trucks, street sweepers, garbage trucks, that kind of equipment. We are helping our customers clean in an environmentally compliant manner.

UNIDENTIFIED SPEAKER: Riveer is the pioneer and leader in engineered wash water recovery systems with more than 1,000 wash water reclamation, filtration and treatment systems around the world. Each wash water recovery system is designed, built and installed to meet specific requirements, including type and volume of wash water, affluent characteristics, level of filtration, type of treatment and disposal, requirements that vary from state to state, country to country.

UNIDENTIFIED SPEAKER: The Riveer company has a

presence around the world. We have distribution in the Middle East and all through southeast Asia and Australia, heavily concentrated in the United States. We service all of the equipment that we sell. We have a worldwide service presence and our customers are very confident when they buy from us that they can reach us any time, 24 hours a day, seven days a week, to get support for their equipment.

UNIDENTIFIED SPEAKER: The Riveer manufacturing process is I.S.O. 9001 certified with single source control over system engineering, manufacturing and installation.

(WHEREUPON, the tutorial was paused.)

MR. LOBBIN: Just quickly, Your Honor, this is a picture for Riveer's actual facility. Of course, they are a Michigan company so it is out there in Michigan.

(WHEREUPON, the tutorial was begun.)

UNIDENTIFIED SPEAKER: We cut, bend and weld steel. We pretreat all of our steel before we powder coat it. We have a U.L. certified control paneling building capacity. We have eight inventor auto C.A.D. seats with engineers working not around the clock but certainly long days.

UNIDENTIFIED SPEAKER: We build our equipment out of building blocks that are fairly fundamental, and we do them in different arrangements so that we make sure that it is a supportable product, but we can do very large wash

areas, very large rinse areas, so we can move 3,000 gallons a minute or we can go down to something that is small and fairly portable like our total aircraft wash system. We are the only company that has gone out and studied the clear water rinse need, and what we have found is that there was a need to go out and create a standard, study what works, and then create a solution based upon what is preferred now.

UNIDENTIFIED SPEAKER: We build really interesting equipment. We are always trying to find a way to filter something better, easier, quicker, and we're finding ways to make better wash racks that do more for the customer, that are more automated so when you look at that, you go this really does a great job.

UNIDENTIFIED SPEAKER: Keep your organization in compliance. Find out more about the many engineered wash water recovery systems from Riveer.

(WHEREUPON, the tutorial was paused.)

MR. LOBBIN: Your Honor, the purpose of the tutorial is not to argue about the claims and all that stuff, but to introduce the area of technology, and although it is a bit of a marketing piece, I think it paints a fair representation of what the company does. Perhaps you're familiar with what a wash rack looks like, but you could see in that video some wash racks that are used in various applications to wash things from, you know, a small piece of

equipment all the way up to a big helicopter, a military helicopter that is washed on a pad that is installed on a runway perhaps on a military base.

Now we're going to get into some of the specifics about wash racks.

This is obviously a dirty piece of equipment that needs washing.

(WHEREUPON, the tutorial was begun.)

UNIDENTIFIED SPEAKER: The Riveer Mud Master is a deployable, closed loop washing system featuring six-foot overspray walls and up to four 18 foot by 42 foot drive-through wash pad lanes. Mud Master's two high-pressure water cannons and foam guns have 75 available feet of hose. The automatic undercarriage rinse and wheel wash system features 30 high flow nozzles. The water filtration system begins when an automatic mud conveyor dumps mud into the portable hopper for proper disposal. Water then passes into a 450-gallon solid settling tank where a skimmer removes any oil and grease.

(WHEREUPON, the tutorial was paused.)

MR. LOBBIN: This is the filtration system that is part of the closed loop that has the water go all the way through and back.

(WHEREUPON, the tutorial was begun.)

UNIDENTIFIED SPEAKER: The water is purified by a

nominal rated filtration system down to 30 microns. The water is further purified by an absolute filtration system. The filtered water is separated into a 5500-gallon tank that supplies the 3,600 P.S.I. four G.M.P. hot water pressure washers. These pressure washers deliver unmatched cleaning power that allows Mud Master to wash a high volume of vehicles in an efficient manner. Contact Riveer for additional information.

(WHEREUPON, the tutorial was paused.)

MR. LOBBIN: That gives you an idea of the wash rack system and how it is a closed loop, where the water goes from the gun to the thing being washed, and it goes down into these gutters and up the conveyor, and the mud gets separated from the fluid, the fluid gets filtered, and then back through so that there can be an environmentally safe system in recovering the water.

Now, this one will go into more of how these things are constructed.

(WHEREUPON, the tutorial was begun.)

UNIDENTIFIED SPEAKER: The purpose of the system is to wash and inspect equipment prior to bringing it back to the United States. The U.S.D.A. requires all equipment to be washed to make sure there is no dirt on the equipment that could bring harmful bacteria, microbes or even invasive species coming back here and being a problem for U.S.

farmers.

The system consists of seven individual I.S.O. containers, 20-foot containers that hold a large number of racks and ramps.

UNIDENTIFIED SPEAKER: The system is completely deployable. Everything fits in a 20-foot I.S.O. container, all the wash racks, the pad, the ramps. Everything will fold up and fit within the 20-foot container so that you can ship it anywhere you want.

UNIDENTIFIED SPEAKER: The wash ramp will hold 160,000 pounds, which is what a typical Army tank weighs. The ramps are organized in such a way that you can put all military equipment up on there from the smallest Jeep to the largest tank.

Riveer Company is the only company that really has taken the mud issue to heart. Most wash racks get overwhelmed with mud very quickly. Riveer Company is the only company that is offering a water cannon with an above ground wash rack. We know that the users need to have a good tool for cleaning their equipment, and getting mud out of the undercarriage of a tank is not going to be easy to do with a pressure washer.

There is a lot of water to maintain, and we know how to do it. There is a lot of mad to capture, and we know how to do that too. We still provide hot water pressure

washers for touch-up cleaning, but the main work is done with the water tank.

The Riveer wash rack is the only wash rack that comes with built in conveyors to automatically take the mud and put it into hoppers. Other wash racks that don't have conveyors or some means of getting the mud off typically fill up with mud rather quickly, and then the users have to find something to do with the mud, find some way to remove the mud, and frequently the systems just get shut down.

In addition to the racks, there is a complete recycling system to capture and recycle the water. It is fully automatic. It backwashes whenever it needs to backwash. It injects ozone 24-seven to kill bacteria. They are all Alan Bradley electrical components that are supported worldwide. It is all stainless steel so there is no corrosion issues with our filtration system. It has oil skimmers to skim oil off. It really can maintain itself with just very minimal monitoring.

This deployable system is totally stand-alone. It comes with 4,000 gallons of water holding capacity, plus a Cat diesel generator that runs on J-P-8 fuel at elevations of up to 7,500 feet. The statement of work requires that the system be up and operating within six hours, and we have found that we can do that in about half the time, so we can have it up and running in about three hours.

MR. LOBBIN: Here you see a crew installing a wash rack system out of those I.S.O. containers, those big containers that you see on trucks on the highway. They bring that modular mobile system to a location, and here they are installing the wash rack and those walls, and they are called overspray walls so that you can capture the water that sprays off the item being washed and keep it inside that closed system.

There they are joining the modular pieces of the wash rack together so that you can make it any size that is needed depending on the application you're using it for.

(WHEREUPON, the tutorial was paused.)

Finally, we have got an animation that we put together to sort of talk --

MR. MILLER: Your Honor, I have one objection to make.

THE COURT: Okay.

MR. MILLER: We were e-mailed about a dozen of these marketing videos yesterday, and they fall outside what I consider a technology tutorial, and 80 percent of the stuff they are showing has nothing to do with the patented technology. This animation here is something that we have never seen before. I don't know who made it. It was created to probably illustrate their infringement position. It seems to go into the realm of argument and not a

technology tutorial.

I just wanted to make an objection for the record on that.

THE COURT: What does making an objection for the record mean?

MR. MILLER: Well, the rules about tutorials --

THE COURT: Do you have an objection or do you just make it for the record, some obscure record, whatever this record is. I never understand what that means. You usually make something for the record if you have not liked the ruling the Court has given you.

MR. MILLER: The purpose of my objection is to point out that it shouldn't be an argument point and that this is not evidence, and it shouldn't be able to be used in the summary judgment proceedings or claim construction proceedings. That is all.

THE COURT: Okay. Well it is not being used in those proceedings now, so I'm not sure that I have anything to rule on, but I have heard what you have said.

You did say earlier on that you didn't see this? Have you not seen it until now?

MR. MILLER: I saw it yesterday.

THE COURT: Okay. Well, let's watch it and if later it occurs that it is being used in connection with a legal argument that you think is inappropriate, then I could

hear you then.

Go ahead.

MR. LOBBIN: Thank you, Your Honor.

It is sometimes hard to separate the two, and so I'm doing my best to show -- let me preface the animation by explaining that we made it, the Riveer Company made it using a C.A.D. system, and it is intended to show the evolution over time of these wash racks, you know, including the accusing infringing wash rack. While it is intended to show some of the products at issue, and I am not arguing about it, I am just showing our perspective on how this field has evolved over time.

(WHEREUPON, the tutorial was begun.)

MR. LOBBIN: So the first implementation you see is -- maybe I should have backed it up a little -- you saw the red surface drop down in between those four walls that we would call a frame. Frame, obviously, is one of the terms used in the patent, but I'm not arguing about what a frame is. I'm just showing you an example of what could be a frame.

The red plate that you saw drop down into that frame would be a surface that catches the water and the debris that falls in between that grading that you see now and the green. Water and debris would fall in between those spaces in the grating and onto that plate that is below. I

am not trying to say what is or isn't Hydro's, or what is or is not Riveer's, but this is our understanding of the technology as it existed in the 2000 time frame, so, many years ago.

Obviously the red plate plus the grating are two different pieces. The pieces of metal would be the grating and the separate piece below it is for the basin plate.

Now we're looking at water.

Now we're looking at the grating being tilted up so that someone can go in there with a shovel or whatever to pull out the solid debris. Then you see at the lower right there, there is a tube and a draining fitting to pull out the liquid debris. The wash water goes out the tube and the solid debris gets taken out physically by lifting up the top piece of the two-piece grate basin construction. You can see that here.

Now what we're seeing is that that first wall has been pulled apart, not because that is what happened, but just to show you what is happening behind it. What is happening behind it is that second piece, that basin plate is being brought up to meet the grating. So now you still have a two-piece grate and basin plate, but instead of being separated, they are actually two pieces that are welded together and brought together to form basically a single structure, made out of two pieces but a single structure

that still has the grating and the spaces in between and has the plate immediately beneath it.

How is that different? Well, the difference is the water and the debris are not falling down into that space within that frame. What they are doing is they are staying on top between those grate spaces on that basin plate.

Now they need somewhere to go. Well, where do they go? A side trough is added. A separate component is brought in and added to the side of that grating, and the water and debris now can flow with gravity into that side trough. How do they do that? You put it on a slight slope or you put in what is called a shim. A shim is just a kickstand or a piece of wood or something -- of course this is heavy equipment, so it would be much heavier than that, but it would be something to create a non-level surface.

That flow goes into the side trough. The fitting there that you see at the front of the picture, now the wash water is drawn out of that side trough through that drainage fitting. Now we have two separate pieces to the structure, the wash rack itself and the side trough. We still have the two separate pieces of the grate and the basin plate that are welded together. You see the draining going on there.

Now, that separate piece, that separate side trough is taken out and now we have the next step in the

evolution of these products, and we're going to make a side trough as an integral part of this wash rack. Okay. This touches on the laches issue that Your Honor heard all about last fall, and I know there has been a ruling on that, and so we are not going to argue about that, but the context of what I'm showing you here is apropos of those arguments that you have already heard.

So now we have got a side trough that is integral with the entire frame, the entire wash rack, and so instead of having a separate piece, you have got the drainage fitting there draining water out of the side trough that is part of one of the exterior walls of the wash rack, and you have got the same grating and basin plate welded together to form the surface on which the wash fluid and debris are directed toward that side trough.

Now, finally, what is happening here? Well, you recall so far we have had a basin plate with the grating welded onto it as a two-piece design that has been put together. So now we're taking off those welded grating pieces and we are replacing it with one piece of steel that has been formed into a shape of peaks and valleys, if you will.

If you look at it from the side, you have got corrugation essentially, and you have got a surface, and at the peaks, where the vehicle or whatever you are washing

sits, then you have got interstices in between those peaks and valleys, if you will, that become the channels through which water and solids are directed toward that side trough.

You can see that here.

So once this design was on the market, that is when in terms of the 298 patent Riveer began believing that there was infringement of that patent.

Thank you, Your Honor, for your indulgence. I hope that was helpful, and certainly we can answer any questions that you have about the presentation.

THE COURT: I don't have any right now.

Do you have anything else to present or is that it?

MR. LOBBIN: Not us.

THE COURT: Were you planning to present anything today, Mr. Miller?

MR. MILLER: I had a little bit, and I had some charts for tutorial purposes, and I could present them if the Court wants anymore tutorial.

THE COURT: Well, it is entirely up to you.

I would like my truck washed. That would be nice.

MR. LOBBIN: By the way, Your Honor, we have a jump drive with these files on it for you, if you would like to take those back to chambers with you.

THE COURT: On that last one that you showed me,

you said that gravity was causing water to flow from the right as we were looking at it to the left into the trough.

MR. LOBBIN: Yes.

THE COURT: How did it get into the trough? I was never clear on that. Does it come to a wall and then there is an opening at the bottom of the wall or what? I was not clear on how it got out of the green into the red.

MR. LOBBIN: It is just like a corrugated tin roof that you see, you know, on a house. It just falls off.

THE COURT: I didn't see the blue flowing over the top of that wall, I guess, and that is what it was doing?

MR. LOBBIN: Yes. It is sitting on top of that frame, so that even the trough portion where the water channels are is still at a higher elevation, once you get to that point, than the frame wall, so it just falls right into the trough.

THE COURT: I just didn't see the blue going over --

MR. LOBBIN: I think it was a function of the C.A.D. program that didn't show that flow specifically.

THE COURT: It was filling up, but I didn't see how and you said it was gravity. That makes sense.

MR. MILLER: That was going to be one of my points on that video is that it made it look like it filled up from the bottom.

THE COURT: Yes.

MR. MILLER: It just goes over the side like a waterfall.

THE COURT: You should fix your graphic to have the blue spilling over.

MR. LOBBIN: Yes. We had our best experts on it and that is all they could come up with. I apologize.

THE COURT: It does make it look like it is kind of filling up from the bottom.

MR. LOBBIN: What happened there?

UNIDENTIFIED SPEAKER: Like a waterfall.

THE COURT: Like a waterfall. That makes a lot of sense. Thank you.

Mr. Miller, you have gone low tech, have you?

MR. MILLER: I have gone low tech here.

Honestly, Your Honor, the technology in this case is not that complex. We're talking about steel and gravity. There are basic principles. All you need when you're washing stuff is you need a place to wash it, and you need a place to collect the overwash and debris, and then you need something post collection to treat it.

If you go to tab A -- by the way, this binder has my demonstratives I will use for both this and claim construction, so tabs B, C and D I guess we can hit when we get into claim construction.

I agree with Mr. Lobbin that it is hard to go through a tutorial without spilling over into argument, because the technology is so simple that you just start talking about your positions. I have no problem if we just dive right into argument today really.

The history of the industry is you have inground wash pads, and that is how it started, and you would have to have an inground sump or basin that was dug into the ground, with concrete, that collects everything. That is how the washing systems used to be made and some still are. They do big concrete in ground systems today. They require a lot of permitting and they require environmental regulations that require E.P.A. approvals and construction and they are permanent.

The industry gravitated to portable wash pads. In the 1990s, if you go to page 3 under tab A, in the 1990s you have the grate over a basin style. The animation Mr. Lobbin showed you showed the beginning of a grate over a basin. Riveer got patents on those. Riveer's patents came out in 2000, filed in '97.

If you go to the next page, and one of the problems with these, which Mr. Lobbin pointed out too, is that when you have got a basin sitting under a grate collecting all of this stuff, it is hard to clean them out. You can attach hoses to the side, as you can see in these

pictures, and you can suck out the water, but that does not clean them out. There is a lot of mud and dirt that sits in there and you have to lift up the grates, and you have to take the car off the grate, and then you have to shovel it out.

So in about 2000, the year 2000, if you go to the next page, Hydro created, as Mr. Lobbin showed you, took the plate and brought it up to the top of the frame, welded it to the rails and created an impervious wash surface. They wanted to avoid having stuff fall through the wash surface, and instead cause it to flow across to a clean out area that you could access while you're still washing the car. Even during the washing process, once you have a side gutter you can access it. That was one of the benefits that is identified in Hydro's patents for this impervious top.

If you go to the next page, their product evolved to where it is a single, as Mr. Lobbin said, one piece of steel, a corrugated piece of steel on top, and that is the wash surface, and that prevents having to clean out anything underneath the wash surface, because nothing can fall through, so you go over to the side and you can clean it out and it is more accessible.

If you go to the next page, there are various methods --

THE COURT: What page are you on?

MR. MILLER: I am on page 7 now.

THE COURT: Okay.

MR. MILLER: Go to trough cleaning.

The industry has gravitated towards this impervious top with a side trough design now. There is not the grate over a basin system as much as there used to be, but there are still various ways now to clean out a trough. You can just clean it out with a shovel, and there is the skid steer and you can make the trough big enough that you can clean it out with a skid steer, and there are different kinds of conveyors. That picture in the bottom corner is from one of Hydro's patents with a screw conveyor that augers everything to one end.

Then that picture is one of the accused products at the bottom of Hydro's that has a conveyor in it. There are various ways to clean out the trough. One of the patents in this case talks about one of those ways.

The next page, page 8, is the trough and there is always a post collection system. Once you pull it out of the collection trough, what happens to it is usually it is attached to a filtration system. You can see these different filtration systems in those blue boxes, and that is a Hydro filtration system, and it has just got a tube connecting it to the side trough. You can see Hydro's clean out tray there. It is kind of a post collection system. It

is connected to the side trough with a tube to where solids can settle.

This is all part of the post collection filtration system. That is kind of the basics of the evolution of how these systems work.

THE COURT: Thank you, Mr. Miller.

Anything to respond to that, Mr. Lobbin?

MR. LOBBIN: Sure.

First, I don't have any objections, for the record, to what he has put forth. I think we are in agreement on many of the issues about the evolution of these products. I don't want to get into argument. I just wanted to point out a couple of things on his demonstratives.

On page 2, the wash rack shown there under the portable wash racks heading, two are Hydro's, the green ones, and the gray one there at the top right is Riveer's.

I'm not sure it was clarified that on page 3 those are Riveer wash racks from that time frame, as well as on page 4. Then on page 6 I think we're in agreement that in the mid 2000s this design evolved of the Hydro pad, and for the reasons we have explained in the prior motions, that is when we believe the infringement began.

Nothing further, Your Honor. Thank you.

We have a couple more videos. If you want some more elaboration on some of the stuff, we would be glad to

show some more.

THE COURT: I think that that has been helpful and I think I won't ask for anymore. I guess we will be hearing you on claim construction at 2:00.

MR. LOBBIN: Yes.

THE COURT: Thank you for the presentations.

(Proceedings concluded.)